FOR MYSORE STATE

(1953) Department.

MS SERIES.

G.O. NO. MU 477

Dated 11.2.53

[Despatch Abstract.]

Criminal Justice - South Kanara Dr.

Issue of instructions regarding grant of adjournments and collection of fines etc to subordinate Magistrates - Action of the HCM. considered proper - Papers recorded

EN0.231192 ets IV/52.

12/12/52

LEGISLATURE (ASSEMELY) SECRETARIAT.

25-11-'52.

UNSTARRED.

SRI N.N. SUVARNA, M.L.A.

HOME DEPARTMENT.

Q.NO.1648.

Will the Hon. the Minister for Law be pleased to state:

(a) whether, in this state, there exists a practice by which the District Magistrates issue circulars to their Subordinate Magistrates, containing instructions as to grant of adjournments, and collection of fines;

(b) whether any such circular has been issued recently by the District Magistrate of South Kanara; and

(c) if any such has been issued, whether the Government will be pleased to place a copy of the same on the table of the House?

ADDITIONAL DEPUTY SECRETARY TO GOVERNMENT 15DEC1952 HOME DEPARTMENT

Home deptt

Pk/25.11.

An advance copy of the L.A.Q. alone may be circulated to M(Law).

Avs/

12.12.52

13.12.1952

12.12.52.

13/12/52

K.D. Kulkarni 14-12-52 M(Law)

SECRETARY TO GOVERNMENT 15DEC 1952 HOME DEPARTMENT

LEGISLATURE (ASSEMBLY) SECRETARIAT. (Same as placed) 3

25-11-'52.

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(c) if any such has been issued, whether the Government will be pleased to place a copy of the same on the table of the House?

Pk/25.11.

5/

Two drafts — Draft I — Home dept.

Very urgent.

Issue today

Memo No. 2-3119-2-US-W/92-1 Dt. 12/12/92

Subl. Justice - South Kanara dt — issue instructions regarding grant of adjournments and collection of fines etc. to Subordinate Magistrates

The D.M., South Kanara is requested to state ~~whether~~ whether any circulars containing instructions as to the grant of adjournments and collection of fines have ~~been recently issued by the D.H.~~ been issued to the Subordinate Magistrates in the South Kanara dt. If so a copy of the instructions should be forwarded to Govt. ~~for information~~

The information asked for is required in connection with a Legislative Assembly Question ~~to be answered~~ raised be Smt Calis Kan

Sd/- 9.12.92.

Sd/- 12.12.92 11/5

12.12.92

13.12.92

To the D.M. South Kanara.

R.D. 22.12.92

Draft II on p3 infra

Special.

R.C.No.6962/52.C3.

Office of the Dt.Magistrate of
South Kanara, Mangalore,
Dated 17th December, 52.

From

Sri C.A.Ramakrishnan, I.C.S.,
Dt.Magistrate of South Kanara,
Mangalore.

To

The Secretary to Government,
Home Department,
Fort St.George, Madras.

Sir,

Subject: Criminal Justice - South Kanara District - Issue of instructions - regarding grant of adjournments and collection of fines etc. - To subordinate Magistrates by the District Magistrate - Copies submitted.

.....

Ref: Government Memorandum No.231192 Cts.IV/52-1, Home Dept. dated 13-12-1952.

...

I took charge of this District on 4-8-1952. A few days thereafter, I began to peruse calendars of Subordinate Magistrates, and to review the statements relating to the disposal of cases and collection of fines in the Courts of the several Magistrates. I found that a most unsatisfactory state of affairs prevailed. It was very common for simple cases to run to 30 or 40 adjournments, and to be pending for over a year without the end being in sight. Often, the adjournments were at the request of the lawyers appearing on either side. The arrear and current balances of fines and other dues pending collection in the several Courts, ran to astronomical figures, the like of which I had not seen in other Districts. The following figures relating to September 1952, may be considered typical:-

Name of Court.	Arrear balance of fines.			Current balance of fines.		
	Rs.	A.	P.	Rs.	A.	P.
S.D.M.Mangalore. ...	1,485-	3-	2			
S.D.M.Coondapoor. ...	2,541-	2-	9	834-	6-	2
S.D.M.Puttur.	1,813-	4-	7	465-	9-	2
A.F.C.M.(General) S.Kanara.	8,658-	12-	3	1966-	10-	5
A.F.C.M.(Prohibition) S.K.	4,909-	15-	0	1401-	0-	0
Hon.Spl.I Class Magistrate, Mangalore.	20,043-	1-	9	5458-	6-	9
I Class Bench Court, Mangalore.	978-	8-	0	132-	8-	0

P.T.O.

As a rule, the action taken by the Magistrates to collect the heavy balances was found to be unsystematic and feeble.

2. My annual inspection of the Courts of the several Sub-Divisional Magistrates and First Class Magistrates in the District (which was taken up in October, 52 and recently completed) revealed that in many instances the Magistrates were allowing the cases to drag on interminably, and that they were not exercising a sufficient degree of control on the progress of cases. As the Government have p 5 ante called for a report before 19.12.1952, I have no time to call for the several records and to give concrete instances of these delays, but these particulars can be furnished if required, and if 15 days' time is granted.

3. In the above circumstances, the following action was taken by me from time to time:

(i) Issue of instructions from time to time in the monthly reviews of the fine statements and the pendency statements.

(ii) Issue of a memo pointing out certain broad principles to be borne in mind in regard to the disposal of cases and collection of fines. (R.C.No.6962/52,C3, dated 1-10-1952) p 23 infra

(iii) Issue of a Circular in regard to the Prohibition Act cases (R.C.No.9077/52, dated 10-12-1952) p 25 infra

The several instructions mentioned above are self-explanatory and I have nothing to add to them.

4. Copies of the following are enclosed. p 17 infra

(i) Extracts of my "General Remarks" in the reviews of monthly fine statements for the months of August, September, and October, 52. pp 11-15 infra

(ii) Extracts of my "General remarks" on the reviews of the monthly statements of receipt and disposal of cases, for the months of August, September, and October, 1952. p 9 infra

(iii) Memo R.C.No.6962/52.C3, dated 1-10-1952. p 23 infra

(iv) Circular R.C.No.9077/52, dated 10-12-1952. p 25 infra

5. Now that a question is reported to have been raised in the Legislature about the action taken by me, I shall be glad to be informed whether the Government approve or disapprove of my

action, so that I may regulate my future work accordingly. 9/

17.12.52

District Magistrate.
South Kanara.

Copy submitted to the Registrar High Court, Madras and to the Secretary to the Boardof Revenue, Chepauk, Madras, with a copy of the Government memo under reply. 15 M/

11

True extract of the General remarks in the review of fine statement for the month of August 1952.

****

GENERAL: In view of the highly unsatisfactory state of affairs in most courts in regard to collection of fines, the Dt.Magistrate would impress on all Magistrates that hereafter, they should not grant time for payment of fines as a rule, but commit defaulting accused straightaway to jail. Only this course will induce the friends or relatives of accused to rush to the court with the fine amounts. There is absolutely no meaning in troubling the police with N.B.Ws and D.Ws after allowing the accused to slip away from the courts when they are physically present. In rare cases where time is granted, bonds should be taken with sureties for appearance of the accused on a definite date with the fine amount, and in default of appearance, action should be taken to forfeit the bonds of both the accused and the sureties.'

All stipendiary Magistrates who have fines of more than 3 months still pending collection run the risk of disciplinary action being taken shortly by the Dt.Magistrate against them.

The State of affairs with the Special I class Magistrate Mangalore is alarming. He will please submit a special D.O. report in the matter to the Dt.Magistrate as to what he proposes to do about it.'

/True copy/ K. Lingappa
H.S. 17/12

For Dt.Magistrate.

True extract of the General remarks in the review of fine statements for the month of September.1952

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13

General: The Dt.Magistrate considers that all cases in which fines are yet to be realised should be brought to the hearing book, and posted from time to time to definite dates, and called on those dates, till the accused either pay up the fines, or are committed to jail. No time beyond 3 months and no further instalments beyond 3 should be allowed under any circumstances, as it would be illegal. Accused who are given time to pay fines should invariably be asked to produce sureties, and both the accused and the sureties should be proceeded against for non-appearance on the dates fixed. All Magistrates are requested to see that these instructions are strictly enforced. The extent to which this was done, and the results noticed, should be reported in the fine statements of the current month. Lack of personal interest on the part of Magistrates is largely responsible for the heavy fine arrears in the District.

/True copy/ K. Lingamadan H.J. 17/12

For Dt.Magistrate.

Truet ex

15

True extract of the general Remarks in the review of fine statements for October 1952.

****

GENERAL : It is a matter for considerable regret that in regard to the work of Collection of fines, the position in the courts of I class Magistrates is much worse than that in the courts of II class Magistrates. Stipendiary I class Magistrates in particular, and all I class Magistrates(including Bench courts)in general, should realise more conveniently their responsibility to collect promptly the fines which they impose.

/True copy/ K. Lingamurthy

H.J. 17/12

For Dt.Magistrate.

17

earlier

True extract of the General Remarks in the review of pending statement for the month of August 1952.

****

The Separation Committee consisting of the Hon'ble Justice P.Rajagopalan, I.C.S., and Sri W.R.S.Sathianandhan I.C.S., recently met all Stipendiary Magistrates in the District at the conference held on 14.9.52, and gave detailed personal instructions in the matter of reducing the pendency of old cases. If every Magistrate pays individual attention to old cases, and takes the trouble to find out what is holding up the disposal of each case, there will be little scope for cases to drag on. Lawyers, parties and witnesses cease to deserve consideration if they try to delay the progress of a case. All Magistrates are requested to take stern action to see that the processes of law are obeyed and respected by all concerned, and to spare no one whoe is a defaulter. Bad cases should be reported for the information and orders of the District Magistrate.

Sd. C.A.Ramakrishnan
District Magistrate.

/true copy/

H.J. 17.12.52

For Dt.Magistrate.

True extract of the General Remarks in the review of pending cases statements for the month of September 1952.

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19

GENERAL: There are several old cases pending in the courts of the Sub Divisional Magistrates Mangalore and Coondapur, Addl. First Class Magistrates (General and Prohibition) Hon.Special First Class Magistrate, Mangalore and I class Bench Court Kasaragod and Mangalore. These Magistrates should strive their utmost and dispose of these old cases without considerable delay.

/True copy/ K Lakshmanaraja
H.J. 17/12
For Dt.Magistrate

17/12

True extract of the General remarks in the review of pending cases statement for the month of October 1952.

***

GENERAL: The Sub Divisional Magistrates Mangalore and Coondapur seem to be losing control over the progress of cases, as the number of over 6 months old cases are disproportionately large in their courts. This is not creditable to them. There is much scope for firmer handling of cases in all courts. The Additional I class Magistrate (Prohibition), Honorary special I class Magistrate Mangalore and the I class Bench court Mangalore should generally refuse adjournments in the over 6 months old cases except when it becomes legally necessary.

-True Extract-

K. Lingamma
17/12

For Dt.Magistrate. 17/12

Copy of Collector's Memo R.C.6962/52-C3 dated 1.10.52.

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Subject: Criminal Justice - Delays in Disposal of cases - and Collection of fines - Present unsatisfactory position - Remarks called for.

******

The District Magistrate has been observing that in many courts in this District:

1) There are abnormal delays in the disposal of cases and
2) Very heavy amounts of fines are outstanding.

1. DELAYS IN THE DISPOSAL OF CASES: Delays in the disposal of cases arise mainly because the Presiding Magistrates do not pay personal attention to the cases each time they come up for hearing. The following principles deserve to be kept in mind.

(i) No cases should be pending for over three months or undergo more than six adjournments.

(ii) No adjournment should be granted on account of absence of Pleaders or to suit their personal convenience. If a pleader is unable to attend Court, there is no reason why he should not depute his Junior or some other Lawyer to attend to the case. This ought to be now easily possible, as there are a large number of lawyers practising before the various courts in the District, and not all of them can be busy all the time. While the presence of the Magistrate, the accused and the witnesses are statutorily indispensable for a case to be taken up, it is not so with regard to pleaders appearing on either side, and who have to adjust themselves to the convenience of the Court and the requirements of the public interests.

iii) No witness who is present should be sent away without being examined.

(iv) Where for any special reasons an adjournment is to be granted, the opposite party should be entitled to costs which should be immediately deposited as a condition for adjourning the case.

(v) Where a case is pending for more than three months, the reasons for its pendency should be written by the Magistrate in his own hand in the monthly statement of pending cases.

II FINES: (a) With regard to fines, if the provisions of Section 388 Cr.P.C. are strictly followed, there ought not be heavy outstandings in any court. The chief provisions of this section are the following:-

(i) The grant of time for the payment of fine is purely discretionary. If the accused is well-to-do and can be expected either to pay the amount immediately, or raise it through his friends and relatives, it will be a bad exercise of discretion to grant time to him to pay the fine. The chances are that if he is immediately committed to jail, the fine will be paid up before the court rises for the day, as such an accused person may not like to spend a night in the Jail.

(ii) Where time is granted, the maximum time contemplated under Section 388(1) Cr.P.C. is only 30 days where the fine is payable in one instalment. In cases where instalments are allowed, the maximum time is three months subject to the conditions that each instalment is paid within 30 days of the other. It should be noted that the section does not permit of the grant of more than "2 or 3" instalments.

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(iii) Whenever time is granted, it is the duty of the Court to get a bond executed with or without sureties for the appearance of the accused before the Court on a definite date. On that date, the accused should appear without fail, whether he brings the fine amount or not. If sureties are insisted upon and if firm action is taken on the due dates, it is very unlikely that any accused will care to absent himself. Of course in the case of absence of an accused person, action should be taken against him and his sureties for the forfeiture of the bond apart from taking steps for the collection of the original fine amount.

(b) In Government Memo No.28040/D/46-3 dated 23rd August 1946, it was pointed out that even in cases where an accused is sent to jail in default of payment of fine, a distress warrant should be issued simultaneously instead of waiting for the default sentence to be over.

(c) In G.O.No.420 Judicial, dated 17.2.1914, it was ordered by the Government that in all cases of imposition of fines, a note should be made in the remarks column of all the calendars as to whether the fine has been paid and if not the period within which the bond has been made returnable.

2. All Subordinate Magistrates are requested to consider the above points and offer their remarks as to whether they are adhering to the instructions. If they are not adhering to the instructions, it should be stated what it is due to, and what difficulties stand in the way of the instructions being carried out.

3. On receipt of the remarks of the Subordinate Magistrates, the Dt. Magistrate will issue circular instructions if found necessary.

/true Copy/

K. Lingamurthy
17/12

For District Magistrate.

17/12

25

Copy of Circular R.C.No.9077/1952 dated 10.12.52 from the Dt. Magistrate of South Kanara.

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Subject: Criminal Justice--Prohibition Act cases--deterrent sentences and quick disposal--necessity--instructions issued.

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The District Magistrate considers that the sentences awarded at present by courts in cases under the Prohibition Act are not sufficiently deterrant. In the majority of cases, people who commit prohibition crime do so evidently for monetary gain. Accordingly, the award of light punishments, especially fines of small amounts, will serve no useful purpose and will only encourage further crime on the part of the accused in order to recoup the fines. No doubt the punishment to be awarded in any particular case has to depend largely on the circumstances and facts placed before the court by the prosecution. However, as a general matter of policy, the District Magistrate would suggest that the following consideration should be borne in mind by courts when deciding the sentence to be awarded in cases under the Prohibition act.

(1) for deliberate offences, especaially those involving large quantities of liquor, or well-thought-out plans of operation or other similar factors, heavy sentences of imprisonment should be imposed. Fine alone, however large, will not do.

(2) Where fines are imposed the amounts should be sufficiently large.

(3) The grant of time for payment of fine should be the exception rather than the rule. Where time is granted the accused and sureties must be bound over to appear on a particular date with the fine amount and if they fail to appear, N.B.Ws should be issued for the accused and action should also be taken simultaneously for the forfeiture of the bond executed by the sureties. Such cases should be noted in the Hearing Pad, and adjourned to definite dates from time to time, till either the fine amount is completely paid or the accused is committed to jail. Under no circumstances should time be granted indefinitely for payment of fines. The District Magistrate will regard the existence of numerous items of arrears of fine in a court as a sign of ineffieiency on thepart of the Magistrate.

(4) Where the accused are adolescents or children, the court should consider whether they are casual offenders or whether they indulge in the illicit liquor trade systematically either on their own initiative, or at the instigation of others behind the scenes, such as their parent, employers etc) For casual offenders of this class, there may be some justification to levy fines. For deliberate offenders, committal to the Borstal school or a Senior certified school will be preferable. It should be remembered that in several cases, young offenders do not pay the fines, and the amounts have to be written off without even the scope for sending the offenders to jail, in view of their tender age. Hence levy of fines on young offenders should not be done in a routine manner.

2. During his recent inspection of the court of the Additional I class Magistrate (Prohibition) S.Kanara,Mangalore the District Magistrate observed that some prohibition cases have been dragging on for unconscionably long periods, involving as many as about 40 adjournments or more. Unless prohibition cases are disposed of promptly, the sentences will not have any deterrant value. If any prohibition case is kept pending for more than three months, the District Magistrate will regard the delay as a sign of indifference and slackness on thepart of the Magistrate concerned.

3. All Magistrates are requested to acknowledge the receipt of this circular in the acknowledgement slip attached below.

-True copy-

K. Lingappa
H.S. 17/12

For Dt.Magistrate.

17/12

R.O.C.No.6917/52-E3.

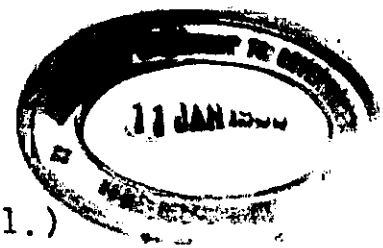
27

From

Sri R.Jayaram Ayyar, M.A., B.L.,
Registrar,
High Court, Madras.

To

The Secretary to Government,
Home Department,
Fort St. George, Madras. (with encl.)



Dated 8th January 1953.

Sir,

Sub: Criminal Justice - South Kanara Dt. - Instructions to Subordinate Magistrates - Collector's Memo. R.C.6962/52-C3.

Ref: R.C.No.6962/52-C3 dated 17-12-52 of the Collector, South Kanara in reply to Home Dept. Memo. 231192 Cts. IV/52-1 dated 13-12-52.

***

I am to forward herewith a copy of the D.O. sent by me to the District Magistrate, South Kanara for your information.

7171

kvsm/

R. Jayaram
Registrar.

D.O.No. R.O.C.6917/52 -E3.

29

Dated 8th January 1953.

Dear Sri Ramakrishnan,

Sub: Criminal Justice - South Kanara Dt. - Instructions to subordinate Magistrates - Collector's Memo R.C.6962/52-C3 dated 1-10-52.

Ref: Your reply R.C.No.6962/52-C3 dated 17-12-52 to Government Memorandum 231192 Cts IV/52-1 (Home) d/-13-12-52.

***

With reference to Paragraph (IV) under the heading 'Delays in the disposal or cases' issued to the Subordinate Magistrates in your Memo R.C.6962/52-C3 dated 1-10-52, I am directed to point that there is no provision in the code of Criminal Procedure to justify the award of costs when cases are adjourned.

Yours Sincerely,
Sd. R.Jayaram,
Registrar.

Sri C.A.Ramakrishnan, I.C.S.,
District Magistrate,
South Kanara.

(TRUE COPY)

37

SECRETARIAT OF THE MADRAS LEGISLATURE

(Assembly Section)

By Sri N. N. Suvarna, M. L. A.

Question No. 1648(unstarred)

Question	Draft Answer
Will the Hon. the Minister for Law be pleased to state:	
(a) whether, in this state, there exists a practice by which the District Magistrates issue circulars to their Subordinate Magistrates, containing instructions as to grant of adjournments, and collection of fines;	(a) The answer is in the affirmative.
(b) whether any such circular has been issued recently by the District Magistrate of South Kanara; and	(b) Apart from the issue of certain instructions from time to time in the monthly reviews of fine statements etc no general circular has been issued by the D.M., South Kanara.
(c) if any such has been issued, whether the Govt. will be pleased to place a copy of the same on the table of the House?	(b) and (c) ~~In view of the answer to clause(b) above the question does not arise.~~ A copy of the circular issued recently is placed on the table of the house

27.1.53

Home U.O.No. 231192/52-3
21.1.53.

19/51

33

Home dept

Memo No. 23119245 IV/52-4 dt 5/2/53

Dept. Justice – South Kanara – Issue of instructions regarding grant of adjournments and collection of fines etc. to subordinate Magistrates

Ref:- from the D.M., South Kanara Rc No. 6962/52 C3 dt 17.12.52

The D.M. South Kanara is informed that subject to the remarks of the High Court communicated to him by the Registrar High Court in his d.o. ref. Rc 6917/52 E3. dt 8.1.53, the Govt. see here no

25

objection to the instructions issued by him

Lpd

3.2.53

3/2/53

dd/4 2.2.53

6/2/53

VSW

4-2-53 Dr. Mrs. WM. South Kanara

35

REVENUE DEPARTMENT.
Subject.

Crim. Justice - South Kanara District - Issue of instructions regarding grant of appointments and collection of fines etc., by the District Magistrate to subordinate Magistrates - Report - submitted.

L.Dis.W.No.3078/52

Station: Madras
Dated: 7-2-1953.

From
Sri W.R.S. Sattianathan, I.C.S., Commissioner of Land Revenue, Madras.
Sri C.S. Krishnamurthi, I.A.S., Joint Secretary, Board of Revenue (IR), Madras.

Read:- From Government Memo No.231192 etc IV/52-1 Home dated 13-12-1952.
From the District Magistrate, South Kanara, R.C.No.6962/52 C3 dated 17-12-52.

L.Dis:-

The Board invites the attention of the Government to the District Magistrate's letter submitted to the Government direct. It agrees with the action taken by the District Magistrate.

For Joint Secretary.

To
The Secretary to Government, Home Department.
Copy to the District Magistrate, South Kanara.

37

Ref.C3. 6962/52.

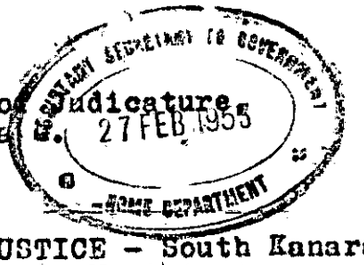
SOUTH KANARA DT. MAGISTRATE'S OFFICE,
Mangalore, dated 24- 2- 1953.

From

Sri. C. A. Ramakrishnan, I.C.S.,
District Magistrate, South Kanara.

To

The Registrar,
High Court of Judicature,
M a d r a s.



Sir,

Sub:-CRIMINAL JUSTICE - South Kanara District - Instructions to subordinate Magistrates regarding the award of costs when cases are adjourned - Instructions - solicited.

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p294 q (S) Ref:- Your D.O.R.O.C.6917/52 dated 8th January 1953.

====

I invite your attention to Sec. 344 of the Criminal Procedure Code which reads as follows "If from the absence of a witness of any other reasonable cause, it becomes necessary or advisable to postpone the commencement or adjourn any enquiry or trial, the court may, if it thinks fit, by orde in writing stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may by a warran remand the ~~case~~ accused if in custody.

2.The words in the above section on such terms as it thinks fit" seem to be wide enough to cover the award of costs to the parties,in cases which are to be adjurned either due to the absence of prosecution, witnesses or the accused. I also invite attention to the judgement passed by the Madras High Court in Sunnasa Kudumbau VS Sevasubramania Kone and six others, Crl.Rev. case No.680/1916 and Crl.Rev.Petition No.557 published at pages 1130 and 1131 of the I.L.R. Madras Volume 40 of 1917 wherein it was held that it was competent for the Magistrate ~~to grant~~ under section 344 Cr.P.C to grant an adjournment, conditional, on the payment of cost by such pers

3. In the circumstances I request authoritative orders of the High Court, as to whether it would not be proper to a the cost of adjourment by Magistrates under sec. 344 Cr.P.C.

Yours faithfully,

For Dt.Magistrate.

12453

Copy submitted to the Secretary to Government Home Departme with reference to Government Memo No.231192/Court.IV/52-4 dated 5-2-1953
Copy to the Secretary Board of Revenue, Madras with refere to Board's L.Dis.W.9078/52 d-7-2-1953.
kvr-24-2-1953

(S)/p354

Home dep

This is only a copy of the letter from D.M. South Kanara addressed to the Registr. High Court. May be filed with (S)

Madras Legis. I-3—3,506—6-12-51.

LEGISLATURE (ASSEMBLY) SECRETARIAT.
Fort St. George
Madras, dated the 11-12-1952

QUESTION No. 1648 for the meeting of the Legislative Assembly ~~to be held on the~~ Commenced on 24-11-1952

Two copies of this question are forwarded to the Home Department.

The question has been admitted.

11/12.
11/12/52

11/12/52

To

The Home Department.

L.O. No - 30464/52-4 M.L
11-12-52.

L No 23192
12/12

Home dept.

Please see the L.A.Q (unstarred) in c.f.
Information with reference to ~~the~~ clauses (b) & (g) of the question may be obtained in the first instance from the D.M. South Kanara.
A draft memo is subtd. for approval. After issue a note will be put up on clause (a) of the question
A draft memo note to the Legislature (Assembly) Secrt is also subtd ~~for~~ for approval

SE
12/12/52
Gs
12.12.52

Home draft I only. No need to issue draft II now that the Assembly has adjourned sine die
13/12/52

Issued as Memo.No.231192 Cts.IV/52-1 d/ 13.12.52)
From the D.M., South Kanara, Rc. No.6962/52 G3 d/ 17.12.52

Please see the L.A.Q. (unstarred) at p.1 c.f. An advance copy of the L.A.Q. was circulated to H. (Law).

2. In view of the highly unsatisfactory state of affairs in most of the criminal courts in the South Kanara dt. in regard to the collection of fines the D.M., South Kanara has impressed on all Magistrates that they should not grant time for payment of fines as a rule, but commit defaulting accused to jail and that in rare cases where time is granted, bonds should be taken with sureties for appearance of the accused on a definite date with the fine amount and in default of appearance action should be taken to forfeit the bonds of both the accused and the sureties. As regards the grant of adjournments the D.M. found that even simple cases were adjourned 30 or 40 times. The D.M. has stated that his annual inspection of the courts of the S.D.Ms. and First Class Magistrates in the district revealed that in many instances the Magistrates were allowing cases to drag on interminably and that they were not exercising a sufficient degree of control on the progress of the cases.. In the circumstances, the D.M. has taken the following action: —

(1) Issue of instructions from time to time in the monthly reviews of the fine statements and the pendency statements.

(2) Issue of a memo. pointing out certain broad principles to be borne in mind in regard to the disposal of cases and collection of fines and

3) Issue of a circular in regard to the Prohibition Act cases.

3. The following are the instructions issued by the D.M. in regard to delays in the disposal of cases:-

(i) No cases should be pending for over three months or undergo more than six adjournments.

(ii) No adjournment should be granted on account of absence of Pleaders or to suit their personal convenience. The lawyers have to adjust themselves to the convenience of the Court and the requirements of the public interests.

(iii) No witness who is present should be sent away without being examined.

(iv) where for any special reasons an adjournment is to be granted, the opposite party should be entitled to costs which should be immediately deposited as a condition for adjourning the case.

A on p23y

(v) Where a case is pending for more than three months, the reasons for its pendency should be written by the Magistrate in his own hand in the monthly statement of pending cases.

4. The instructions issued by the D.M. in regard to collection of fines are as follows:-

(i) The grant of time for the payment of fine is purely discretionary. If the accused is well-to-do and can be expected either to pay the amount immediately, or raise it through his friends and relatives, it will be a bad exercise of discretion to grant time to him to pay the fine.

(ii) In cases where instalments are allowed, the maximum time is three months subject to the conditions that each instalment is paid within 30 days of the other. It should be noted that the section (388 Cr.P.C.) does not permit of the grant of more than "2 or 3" instalments.

B on pp 23-24 y

(iii) Whenever time is granted, it is the duty of the Court to get a bond executed with or without sureties for the appearance of the accused before the Court on a definite date. In the case of absence of an accused person, action should be taken against him and his sureties for the forfeiture of the bond apart from taking steps for the collection of the original fine amount.

(iv) Where an accused is sent to jail in default of payment of fine, a distress warrant should be issued simultaneously instead of waiting for the default sentence to be over.

(v) In all cases of imposition of fines, a note should be made in the remarks column of all the calendars as to whether the fine has been paid and if not the period within which the

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bond has been made returnable.

4. The D.M. also directed the subordinate Magistrates to consider the above points and offer their remarks as to whether they are adhering to the instructions, if not, the Magistrates were asked to state what difficulties stand in the way of the instructions being carried out.

parn 2, p 24 f

5. The instructions of the D.M. regarding the imposition of deterrent sentences for quick disposal of cases under the Madras Prohibition Act are as follows:-

"For deliberate offences, especially those involving large quantities of liquor or well-thought out plans of operation or other similar factors, heavy sentences of imprisonment should be imposed. Fine alone however large, will not do. Where fines are imposed the amount should be sufficiently large. The grant of time for payment of fine should be the exception rather than the rule. Under no circumstances should time be granted indefintely for payment of fines. The D.M. will regard the existence of numerous items of arrears of fine in a court as a sign of inefficiency on the part of the Magistrate."

p 25 f

For deliberate offenders, committal to the Borstal School or a Senior Certified School will be preferable. It should be remebered that in several cases, young offenders do not pay the fines, and the amounts have to be written off without even the scope for sending the offenders to jail in view of their tender age. Hence levy of fines on young offenders should not be done in a routine manner.

6. South Kanara is a non-separation Dt. The present D.M. Sri C.A. Ramakrishnan, I.C.S. took charge of the district on 4.8.52. Under Sec. 17 Cr.P.C. all Magistrates or Benches in any district shall be subordinate to the D.M. who is empowered to make rules and give special orders consistent with the Code of Criminal Procedure as to the distribution of business among such Magistrates. Under rule 508 of the Criminal Rules of Practice, the D.M. is responsible for the supervision of the magisterial work of the subordinate magistrates. The grant of adjournment of criminal proceedings is governed by Sec. 344 Cr.P.C. and rules 8 and 161 of the Criminal Rules of Pracice. Section 344 Cr.P.C. lays down that if, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to post-pone the commencement of or adjourn any enquiry or trial, the court may if it thinks fit, by order, in writing stating the reasons therefor from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant

p 7 f

p 8 of BK No 150.

p 39 BK No 157
p 51 of BK No 158

remand the accused, if in custody. This section gives discretion to the court. Sec. 388 Cr.P.C. lays down as follows:-

(1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine, and the fine is not paid forthwith, the Court may -

(a) order that the fine shall be payable either in full on or before a date not more than thirty days from the date of the order, or in two or three instalements, of which the first shall be payable on or before the date not more than thirty days from the date of the order and the other or others at an interval or at intervals, as the case may be, of not more than thirty days, and

(b) suspend the execution of the sentence of imprisonment and release the offender on the execution by the offender of a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before the Court on the date or dates on or before which payment of the fine or the instalments thereof, as the case may be, is to be made; and if the amount of the fine or of any instalment, as the case may be, is not realised on or before the latest date on which it is payable under the order, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith: and if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may atonce pass sentence of imprisonment.

The grant of time for the payment of fine is purely discretionary.

7. The Madras Prohibition Act specifies only the maximum punishment that can be imposed by a Magistrate. The quantum of sentence is entirely a matter within the discretion of the Court.

The instructions issued by the D.M. and referred to above are general in character. No mention is made to any specific case. It was been the practice in non-separation districts for the D.Ms. to issue general circulars regarding the disposal of cases etc. for the guidance of Magistrates. A copy of the D.M.'s letter has also been communicated to the Registrar, High Court, Madras. The D.M. has also stated that as a question is reported to have been raised in the legislature

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about the action taken by him, he may be informed whether the Govt. approve or disapprove of his action so that he may regulate his future work accordingly. The L.A.Q. in the c.r. is unstarred and hence there will not be any supplementary questions. But the M.L.A. enquires whether the Govt. will place a copy of the circular issued by the D.M. on the table of the house. The M.L.A. apparently refers to the Collector's Memo. at pp.23-24 c.f. Before preparing a draft answer to the L.A.Q. the case may be sent to Legal (Opn.) for remarks regarding the propriety of the D.M. issuing the instructions and whether the instructions may be deemed to be in order.

of paras, pp & 9 of

b1 of

of p1 of

A... & p23 of

A p23 of a. & p21 &

Public (Sepn.) may also see regarding the practice in Separation Districts. Development may also see.

Pl. See paras 2 and 3 at p. 24 of.

Sd/- 2.1.53

Sd/- 3.1.53

The D.M. has called for the remarks of the mgte on the suggestions made by him as it is only after getting the replies he proposes to consider the question of issue of circular instructions, if found necessary. It cannot therefore be said that the D.M. has issued any circular instructions

M/3.1.1953

T.S. Iyer 3-1-53

Home.O. 23/192/53/IV 2-2 3/1/53.

pub (Sep) 3/1

Dev

Legal (Opn).

Pul (Sepr) Dept

The L.A.Q. in the c.f. and the notes of Home from p.2 to 6 ante may be perused.

There would appear to be nothing improper or irregular in the instructions issued by the District Magistrate on pp.11-25 c.f. The entire responsibility for criminal administration in a district (whether separate or non-separate) rests fairly and squarely on the District Magistrate. The instructions issued by the District Magistrate to the subordinate magistrates in the district under consideration relate to certain matters that are met with in the day to day administration of criminal courts and are with a view to secure better coordination between the magistracy and a more speedy disposal of cases. Hence the circular instructions in question would not be open to any objection.

pp 11-25 c.f.

pp 23-25 c.f.

The mere fact that the Committee gave some instructions which inspired the Coll. to issue Orders will not make the latter any the less objectionable if they are otherwise so

BB

The matters dealt with in the circular instructions of the District Magistrate have been adverted to by the Committee of Enquiry during its recent visit to South Kanara and would appear to have been based on the instructions given by the Committee in the matter of effective supervision of subordinate courts.

Vide proceedings at (W)

The Committee found there were considerable instances of inadequate sentences by the subordinate magistrates and a considerable number of old cases, most of them were I.P.C. cases (and cases of non-payment of fine). The Committee gave some general instructions to the subordinate magistrates in the district at a conference on how to keep control over the work and to effectively supervise the subordinate magistrates. The District Magistrate who was also present at the conference was requested by the Committee to bring up the level of efficiency of the magistracy to the pre-war standard. The circular instructions by the Collector on pp.23-25 c.f. was after the visit of the Committee to this district and cover matters discussed by the Committee in its proceedings for this district, a copy of which was communicated to the District Magistrate. Hence the propriety of the circulars issued by the D.M. and especially the one on pp.23-25 c.f. are not open to question.

Not so axiomatic

BB

/P.T.O

With these remarks the case may be passed on to Development.

6.1.53

The remarks of this Department have been called for only on part (a) of the L.A.Q. so far as Separation districts are concerned.

The general practice in regard to the methods of control by district magistrates in non-separation districts is, or should be the same as the general practice in separation districts, the relevant provisions of the code being the same for both sets of districts. Under section 17 of the Cr.P.C., all magistrates in a district are subordinate to the district magistrate and the latter has general powers of superintendence and control over the former. This control is being exercised generally to keep the subordinate courts in proper efficiency. Rule 292 of the Criminal Rules of Practice indicates the special points which district magistrates are expected to notice. Among the well-known methods of exercising control are the following:-

(i) Reviewing periodical returns and statistics;

(ii) Passing remarks on calendars of judgements;

and(iii) Issuing general circulars

In all these, there will be no reference to any pending case and the instructions or remarks, if any, will relate only to cases disposed of already by the magistrate concerned; on this ground it has been considered that these methods do not involve any direct interference with the judicial discretion of the magistrates. D.M's in separation districts have also been adopting the above three methods of exercising control and supervision.

A

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To say that the methods employed by the D.M's in the two sets of districts are the same, is not of course the same thing as saying that the manner in which they do so will also be the same. Judicial district magistrates, brought up as they are in their own traditions would, in issuing a circular or adding remarks on

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returns, certainly be very much more careful than one brought up in executive traditions to avoid reference to any matter which is even likely to influence the judicial discretion of the magistrate. Thus, if it is the intention to impress on the magistrates their duty in regard to the collection of fines, the judicial district magistrates would have drawn the attention of the magistrates to the provisions of the code, i.e. Section 388 Cr.P.C. and would have indicated that the discretion should be wisely exercised. He would not perhaps have sent a circular of the type at p.11, c.f.

B

With these remarks the file may be passed on to Dev

6.1.53

Legal / Dev

Rev (Depn) G.O. 16/5-3-1
16/1/53

2377

FIRST ASST. SECRETARY TO GOVERNMENT
7. JAN 1953
DEVELOPMENT DEPARTMENT

Dev(Sel)

They are framed and passed on to Legal (Opn). (See Dist's instructions for the disposal of Prohibition Cases on at p 25 ante)

Dy
6/53
29.1.53

Legal (C)
9.1.53

Dev(o)
2377/57/53-1
9-1-53.

ASSISTANT SECRETARY
826
9- JAN 1953
2PM
LEGAL DEPARTMENT

Legal (Opinion)

Legal(Drafting-A)Dept.

The remarks and instructions of the District Magistrate, South Kanara, did not relate to any particular pending proceeding before any of his subordinate Magistrates so as to interfere with the judicial discretion of the Magistrate. They are of a general nature intended more as a guidance rather than as a direction to the subordinate Magistrates who have necessarily to be controlled by the District Magis-

trates in the exercise of his powers of supervision as indicated in rule 292 of the Criminal Rules of Practice. Of the copies of the communications of the D.M. to his subordinate magistrates at pages 11-25 c.f., only the last one at page 25 c.f. is a circular and the rest are merely general remarks. It cannot be said that it is improper for the District Magistrate to have issued these communications. At any rate, there would be no harm in placing on the table of the House a copy of the circular at page 25 c.f. which is presumably the one under reference in the unstarred question.

S 10360 16/1

88 16.1.53

16/1 J.S.

Home Legal q.o. 826/53-1 16.1.53.

(Summary) Home dept.

M.L.A.

Please see the L.A.Q. by Sri N.N.Suvarna at p.1. c.f., The question is unstarred.

Clause (a) of the question: Whether in this State there exists a practice by which the District Magistrates issue circulars to their subordinate magistrates containing instructions as to grant adjournments and Collection of fines. } p.1 c/f.

Under Section 17 of the Cr.P.C., all magistrates in a district are subordinate to the district magistrate and the latter has general powers of superintendence and control over the former. This control is being exercised generally to keep the subordinate courts in proper efficiency. Under Rule 308 of the Crl.Rules of Practice, the D.M. is responsible for the supervision of the magistrial work of the subordinate magistrates. Rules 292 of the Cr. Rules of Practice indicates the special points which district

c/f Pub(Scp) note at p6 ante

p85 c/f the Bk no 150.

p60 of the Bk no 150

(Contd...)

magistrates are expected to notice and among the well-known methods of exercising control are the following:-
(i) Reviewing periodical returns and statistics.
(ii) Passing remarks on calendars of judgments and
(iii) Issuing general circulars.

In view of the above provisions, District Magistrates in non-separation districts have been issuing circulars for the guidance of subordinate magistrates Pub.(Sep) have noted that District Magistrates in separation districts have also been adopting similar methods of exercising control and supervision.

In the circumstances, the answer to clause (a) of the question may be in the affirmative.

Clause (b) of the question: Whether any circular has been issued recently by the District Magistrate. of South Kanara.

The District Magistrate, South Kanara has been consulted with reference to the above clause. The District Magistrate's reply is at pp.7-9 c.f.. He has sent extracts of his general remarks and copies of general instructions issued by him, which are at p.p. 11-25 c.f. In explaining the circumstances under which the instructions came to be issued, the District Magistrate, South Kanara has stated, that he took charge of the distict on 4-8-1952; the perusal of calendars of subordinate magistrates, the review of statements relating to the disposal of cases and collection of fines and inspection of courts revealed a very unsatisfactory state of affairs. The District Magistrate has also stated that it is very common for simple cases to run to 30 to 40 adjournments and to be pending for over a year without the end being in sight and that the arrear and current balances of fines and others dues pending collection in the several couts ran to astrpnomical figures the like of which he had not seen in other districts.

P.T.O.

Of the communication, issued by the District Magistrate, only that at p.25 c.f. is a circular. That circular relates to cases under the Prohibition Act and is not of general as contemplated in the question. The answer to clause (b) of the question may therefore be that apart from the issue of certain instructions from time to time in the monthly reviews of fine statement, pendency statements etc., no general circular as such has been issued by the District Magistrate, South Kanara

Clause (c) of the question: If any such (circular) has been issued, whether the Government will be pleased to place a copy of the same on the table of the House:

In view of the answer suggested at A above, the question does not arise.

2. The District Magistrate requests to be informed whether the Government approve or disapprove of his action, so that he may regulate his future work accordingly. He has sent copies of his reply to Government to the High Court and the Board of Revenue. The Registrar High Court has pointed out to the District Magistrate with reference to para (iv) of his instructions dated 1-10-52, that there is no provision in the Cr. P.C. to justify the award of costs when cases are adjourned. Presumably the High Court has not seen any objections to the various other instructions of the District Magistrate. The Legal Department are of opinion that it is not improper for the District Magistrate to have issued the communications. In the circumstances, the District Magistrate may be informed that subject to the remarks of the High Court, the Government have no objections to the instructions issued by him.

3. A draft answer is submitted for approval. The question being unstarred there will be no supplementaries.

For orders as to circulation.

27.1.53.

As regards clause (b) and (c) of the question, as pointed out by Legal, the reference seems to be to the circular at p25 cf and there is no objection to placing

27.1.53.

p25 cf

p1 ante

p1 cf

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p1 cf

C

para 5, pp 8-9 cf

p29 cf

* B on p23 cf

Not clear whether this cannot be done under Section 344 Cr P C

pp 11-25 cf.

S on p10 ante

p29 cf

A

cf p1 f

L.A.Q. 1648

6/29/1

a copy of it on the table of the house.

27.1.1953

M(Law)

27-1-53

27-1-53

M (Law) 29-1-53

SECRETARY TO GOVERNMENT
30 JAN 953
HOME DEPARTMENT

Please see the orders in circulation above. The session of the Madras Legislative council and the Madras Legislative Assembly which commenced on 17th Nov. 1952 and 3rd Nov. 1952 respectively has been prorogued vide G.O.Ms No. 269, Public (Elec) d. 31.1.53 Consequently the L.A.Q. at pleas lapsed.

With reference to 'A' on p12 ante a draft memo is subtd. for approval. After issue the papers may be recorded for facility of future reference

3/2/53

3/2/53

4.2.1953

JOINT SECRETARY TO GOVERNMENT
30 JAN 1953
HOME DEPARTMENT

G.O Ms No. 477 dt 11.2.53

Crl. Justice + South Kanara Dt — issue of instructions regarding grant of adjournments and Remission of fines etc by subordinate Magistrates — action of the WM. considered proper — papers recorded

~~Secretary~~